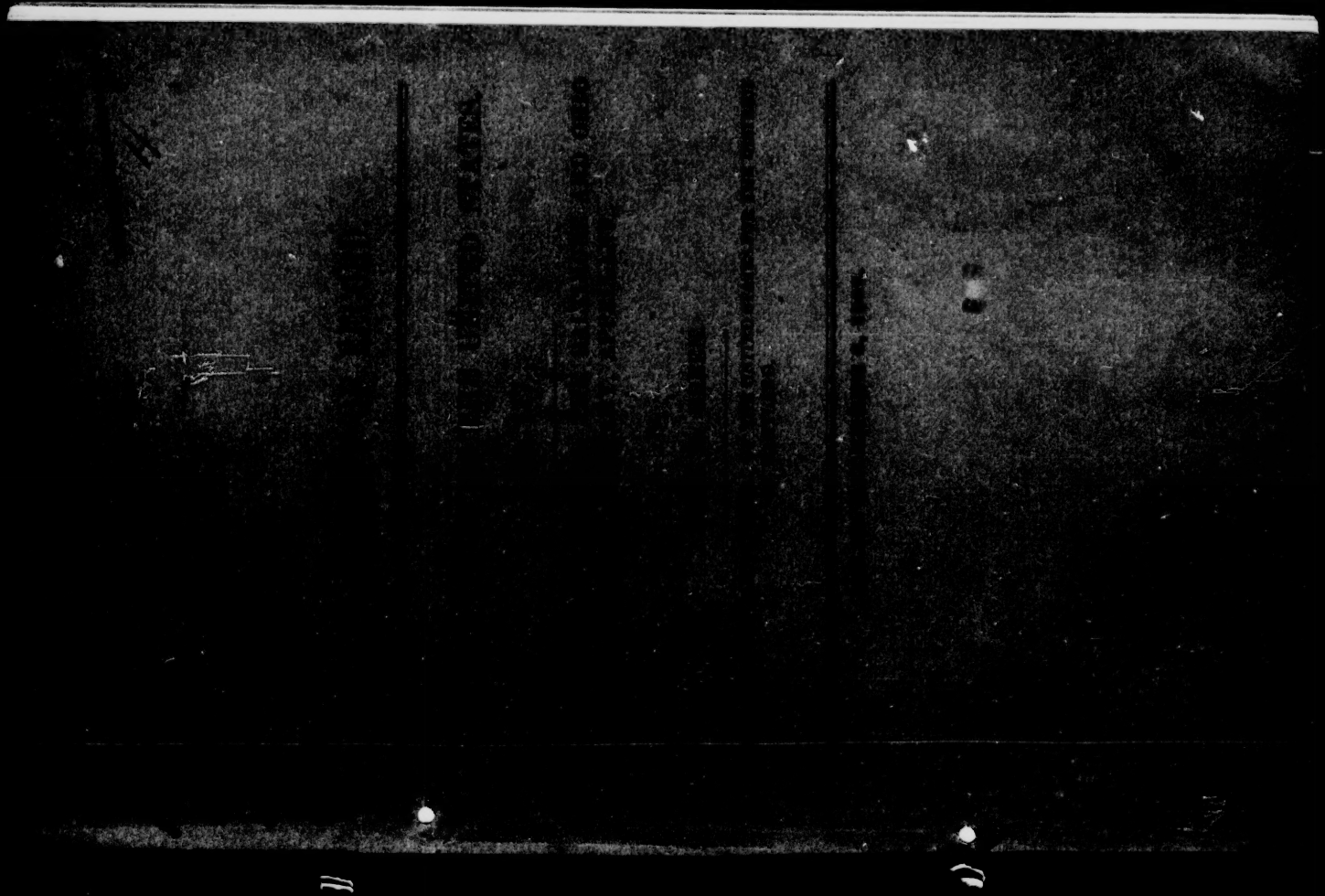

SUPREME COURT OF THE UNITED STATES.

No. 177.

THE STEAMBOAT CARROLL, THE BALTIMORE AND OHIO RAILROAD COMPANY, APPELLANT,

vs.

JOHN M. GREEN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

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1 THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a Circuit Court for the United States in and for the district of Maryland, begun and held at the city of Baltimore, on the first Monday of April, in the year of our Lord one thousand eight hundred and sixty-seven.

Present: The Honorable William F. Giles, judge Maryland district; Andrew Sterett Ridgeley, esquire, attorney; Washington Bonifant, esquire, marshal.

JAMES W. CHEW, *Clerk*.

Among other, were the following proceedings, to wit:

THE CLAIMANTS OF THE Steamer Carroll
vs.
JOHN M. GREEN.

Be it remembered, that heretofore, to wit, on the eighteenth day of August, in the year of our Lord one thousand eight hundred and sixty-six, the said claimants of the steamer Carroll, by John H. B. Latrobe, esquire, their attorney, filed in the Circuit Court a record from the District Court of the United States in and for the Maryland district, in the words and of the tenor following, to wit:

Record.

2 THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a District Court of the United States in and for the Maryland district, begun and held in the city of Baltimore, on the first Tuesday, in June, (being the fifth day of the same month,) in the year of our Lord one thousand eight hundred and sixty-six.

Present: The Honorable William F. Giles, judge Maryland district; Williams J. Jones, esquire, attorney; Washington Bonifant, esquire, marshal.

JAMES W. CHEW, *Clerk*.

Among other, were the following proceedings, to wit:

Attachment.—Libel, filed 1st March, 1867.

JOHN M. GREEN
vs.
THE STEAMER CARROLL.

To the marshal for the Maryland district, greeting:

We command you that you attach, seize, take, and safely keep the steamer Carroll, her engine, machinery, boats, tackle, apparel and furniture, to answer the libel of John M. Green; and how you shall execute this precept, you make known to us, in our District
3 Court for the district aforesaid, at the United States court-

room, in the city of Baltimore, on the fifteenth day of March inst.; and have you then and there this writ.

Witness the Honorable William F. Giles, judge of our said District Court, this first Tuesday of December, in the year of our Lord one thousand eight hundred and sixty-five.

Issued 1st day of March, 1866.

[SEAL.] JAMES W. CHEW,
Clerk Dist C't.

Marshal's return.

Attac'd March 2d '66. Advertised. Release by Stip. March 5th, '66.
W. BONIFANT, *U. S. Marshal.*

Advertisement.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

Whereas, on the first day of March, 1866, John M. Green filed his libel in the U. S. District Court for the district of Maryland against the Steamer "Carroll;" and whereas, by virtue of process in due form of law to me directed, returnable on the 15th instant, I have seized and taken the said steamer, and have the same in my custody: Notice is hereby given that a District Court will be held at the United States court-room, in the city of Baltimore, on the 15th March inst., for the trial of the said premises; and the owner or owners, and all persons who may have or claim any interest,
4 are cited to be and appear at the time and place aforesaid, to show cause, if any they have, why a final decree should not pass as prayed.

W. BONIFANT, *U. S. Marshal.*

[50 cents U. S. inter. rev. stamps]

Libel.

To the Honorable William F. Giles, district judge of the United States in and for the district of Maryland:

The libel and complaint of John M. Green, of the city of Baltimore, in the State of Maryland, alleges and articulately propounded as follows, that is to say:

1. Firstly. That at the time of the collision and damage hereinafter mentioned, and for several years before your libellant was, and still is, the sole owner of the schooner Loon, a vessel of the burthen of seventy-five tons or thereabouts, of and belonging to the port of Baltimore, and duly enrolled and licensed for the coasting trade, and used and employed in the business of commerce and navigation between ports and places in different States and Territories of the United States.

2. Secondly. That the said schooner, being tight, staunch, properly manned, and provided in all respects for the intended voyage,

and being laden with a valuable and assorted cargo, left the port of Baltimore on Thursday, the twenty-first day of December last, at
or about the hour of four o'clock in the afternoon, destined
5 for Hog island, in James river, in the district of Virginia, and proceeded down the bay in her course, until nearly abreast of Point No Point, in the Cheasapeake Bay, between the Patuxent and Potomac rivers, when, between one and two o'clock in the morning, on the twenty-second of December last, at the distance of half a mile, or thereabouts, a large steamer was observed to be approaching from an opposite direction, coming up the bay; that the said schooner was then sailing nearly on a course of south by east, being her proper course, down the bay, and was sailing under a fair breeze, at about seven miles per hour. The wind was then north northwest, or thereabouts. The lights of the schooner were suspended, and in their proper places. Although the moon had gone down, the stars were shining brightly; and the said schooner ought to have been seen, if there had been a proper and attentive lookout on said steamer, at a considerable distance, so as to have prevented any possible collision of the said steamer with the said schooner. The schooner held her course steadily and unvaryingly, until it was observed that the steamer, when within the distance of about three hundred yards, changed her course very suddenly, heading directly to the eastward, and which was an effect produced by putting her helm to port.
In this condition, seing that the steamer was coming right
6 upon the schooner, and that a collision was inevitable, all that the captain of the schooner could do was to endeavor to place the schooner in a position to receive the blow with a result as little disastrous as possible; and with this view he hove the helm of the schooner hard-a-starboard, so as to throw the head of the schooner as much as possible to the eastward. But for this change, although but partially accomplished, the bow of the steamer would have struck the schooner directly amidships, and would have run over her, and all on board the schooner would probably have perished. By the change, the schooner received the blow on the starboard side, just forward of the foremast, in an oblique direction. The steamer cut the schooner down to the garboard streak, broke three-fourths of the way through the deck, leaving remaining only about three planks of the other side undisturbed, and doing other considerable damage to the said schooner, so that, as the result of the said collision, and of the injury resulting from said collision, the said schooner immediately sank in about five and a half fathoms of water. The captain and crew of the schooner, having taken to the boat of the schooner, were afterwards received on board of the said steamer; but, although the
captain of the said schooner urgently requested that the boat
7 of the said schooner might be towed by said steamer to Baltimore, the captain of the said steamer possibly refused to tow the same, stating that he had already one boat in tow, (a boat of another vessel, which, on the same night, the said steamer had run down,) and that he could not, and would not, undertake to tow another boat.

3. Thirdly. That the said steamer proved to be the Carroll said to be one of the vessels of the Baltimore & Ohio Railroad Company, and being one of the steamers of the line of steamers running between the city of Baltimore, in the district of Maryland, and the city of Liverpool in England, being a steamer of large size and great power, and which, at the time of said collision, was sailing at great and unsual speed.

4. Fourthly. That the damage sustained by said schooner was very considerable; and that the expense of raising her and towing her to Baltimore, and the expense of necessary repairs there put upon her, and a reasonable allowance for stores and lost articles belonging to the said schooner, together with loss of freight, and a reasonable allowance of demurrage for loss of employment of said schooner from the time of said collision, until she was put in repair for service, amount to the sum of two thousand nine hundred and seven dollars and sixty-six cents, an account whereof, marked
8 libellant's Exhibit A, is herewith filed as a part of this libel and complaint.

5. Fifthly. That the said collision was the result of negligence and want of due care on the part of the persons in charge and having control of the navigation of said steamer at the time of said collision, and that said collision would and could have been avoided, if the persons having control of said steamer had exercised reasonable caution in navigating the same, and had paid due attention to the imperative rules of navigation, and that said collision was not in any wise attributable to any default, neglect, or act of the captain and crew of said steamer.

6. Sixthly. That the said premises are true, as hereinbefore propounded.

7. Seventhly. That the said steamer is now lying at her wharf in the city of Baltimore within the admiralty jurisdiction of this honorable court.

Wherefore the libellant prays that process in due form of law may issue against the said steamer Carroll, her engines, machinery, boats, tackle, apparel, and furniture; and that this honorable court will pronounce for the damages aforesaid and costs, and will
9 grant such other and further relief in the premises as to justice and right may appertain, &c.

WM. SCHLEY, *Proctor for Libellant.*

Exhibit A.

BALTIMORE, *Feb'y 18th*, 1866.

Steamer Carroll to schooner Loon and owner,

Dr.

To expenses for getting Loon to Baltimore:

No. 1.	Steamer watch-bill, p'd	$315 00
2.	John Brown riggers bill, p'd	89 00
3.	Steamer Pacific'r bill, p'd	720 00
4.	Schooner R. W. Remp's bill, p'd	200 00

5.	Schooner F. W. Johnson's bill, p'd	200 00
6.	John C. Turner's bill, lumber, p'd	7 55
7.	John M. Green's services	100 00
8.	Capt. James Edmondson's bill, services	60 00
	Paid for pumping out, no bill	27 00
	Paid Dr. Jones for lumber and nails, no bill	5 00
	Bills for repairs in Baltimore, see bills	1,734 35
11.	Ship carpenter's bill	1,496 96
12.	Ship joiner's bill	118 73
13.	Blacksmith's bill	55 29
14.	Blockmaker's bill	22 47
15.	Rope, bill	194 95
16.	Copper, bill	37 47
17.	Riggers, bill	210 12
18.	Sailmaker's bill	599 36
20.	Paints, bill	88 90
10 21.	Painter's bill	25 06
22.	Mattrasses and bedding, bill	21 75
23.	Stove, pipe, and repairs, bill	14 18
24.	Compass, bill	6 00
25.	Commissions and stores, bill	46 75
26.	Freight on board, bill	250 00
27.	Boat builders, bill	86 90
29.	Clock	6 00
29.	Lost time; Dec. 10 days; Jan'y 31 days; Feb'y 18 days; 59 d'ys *a* $15	885 00
30.	Water casks, bill	6 00
31.	Enrollment & license in custom-house	1 75
		$5,907 66

Libel in District Court, U. S.

Claim.

JOHN M. GREEN
vs.
THE STEAMER CARROLL.

To the Honorable William F. Giles, judge of the United States for the district of Maryland:

And now the Baltimore and Ohio Railroad Company, owners of the said steamer, intervening for said company's interest therein, claim the said steamer, with her appurtenances, as the bona fide owners thereof, praying that this court will order the restitution of the same.

J. J. ATKINSON, *Treasurer.*

Sworn to, Mar. 5th, 1866, before me.

ISAAC BROOKS,
United States Commissioner.

[5-cent U. S. int. rev. stamp.]

11 *Stipulation.*

THE UNITED STATES OF AMERICA, *District of Maryland, to wit:*

Be it remembered, that on this fifth day of March, in the year of our Lord one thousand eight hundred and sixty-six, before me, Isaac Brooks, jr., a commissioner appointed by the Circuit Court of the United States for the fourth circuit, in and for the Maryland district, pursuant to the act of Congress, entitled "An act for the more convenient taking of affidavits, and bail in civil causes depending in the courts of the United States," appear John H. B. Latrobe and Joshua J. Atkinson, of the district aforesaid, in their proper persons, and submit themselves to the jurisdiction of the District Court of the United States for the district of Maryland, and consent to bind themselves, and do acknowledge themselves, their heirs, executors, and administrators, to be bound in the sum of ten thousand dollars, for the claimants of the steamer Carroll unto John M. Green, to perform and fulfil the final order and decree of the said District Court, and, in case of an appeal from such final order and decree of the said District Court, then the final order and decree of the Circuit Court of the United States for the fourth circuit, in and for the Maryland district, and in case of an appeal from such final order and decree of the said Circuit Court, the the final order and decree of the

12 Supreme Court of the United States, in a certain cause now depending in the said District Court, wherein the said John M. Green is libellant; and the claimants of the said steamer Carroll are respondents, and unless they so do, they severally consent that execution shall issue against them their heirs, executors, and administrators, their goods, chattels, lands, and tenements wheresoever found, or to be found.

Acknowledged before—

ISAAC BROOKS, Jr.,
U. S. Commissioner.

Answer.

The answer of the Baltimore & Ohio Railroad Company to the libel and complaint of John M. Green of the city of Baltimore and State of Maryland, respectfully shows:

First. To the first allegation of the said libellant this respondent sayeth that it is altogether ignorant, and prays strict proof thereof, should this court deem it necessary.

Second. To the second allegation this respondent sayeth that it knows nothing of the particulars of the voyage or cargo of the schooner therein mentioned; that assuming the schooner aforesaid to have been one with which the steamer Carroll did in fact come in contact on the night of the 21st of December, 1865, the facts connected with that occurrence are as follows: That whether the said schooner had lights on board in their proper place or not, this respondent did not know, but admits that the said schooner was

13 seen before the accident; that as soon as said schooner was seen,

and when she, the said schooner, was heading down the bay on her course of south and by east, with her sails boomed out on the starboard side, the wind being north northwest, the helm of the steamer Carroll was put to port, which would have carried her clear altogether of the said schooner. had she kept her course of south and by east, as it was the duty of the man at the helm to have done, but for some reason or other, whether from want of presence of mind, or ignorance, or some other cause, the said schooner's helm was put hard-a-starboard, which had the effect of towing her across the bows of the Carroll, and caused her sails to gibe over to the starboard side; that by this time the vessels had approached so close that contact was unavoidable, and the schooner which was moving under a strong northwester much faster than the Carroll which was going at only half her usual speed at the time, struck the Carroll on the stem, the hull of the schooner striking the steamer with that portion of the starboard side of the former just forward of the forechains, in an oblique direction; that the allegation in the said libel that the said schooner struck or was struck on the larboard is untrue, as must be apparent from the statements of the libel itself. It is also untrue that the said schooner sunk; after the accident she capsized and was
14 afterwards towed up to Baltimore; that it is true that the said steamer refused to take the schooner's boat in tow; there was already one boat in tow, and the steamer, being a propeller, the captain was not willing to incur the risk of tow-line becoming entangled in the blades of the propeller; that the respondent has been informed, and believes, that the accident was owing to negligence on the part of the libellant or his agents on board the schooner aforesaid; that the only person on deck at the time was a negro lad, who was at the helm, and who could not see forward because of a deck load of hay which hindered the view; that there was no lookout on deck to give the proper warnings to the man at the helm; that the captain was below at the time, or immediately before, the collision; that he sprang on deck and ignorantly or inadvertently put the helm hard-a-starboard, when, if he had kept his course, there would have been no collision, as the steamer's helm was already to port, and her course such as to to have given a wide berth to said schooner; that, as to extent of the injury to said schooner, this respondent knows nothing, and prays that the libellant may be held to strict proof thereof, should the court hold this respondent to be liable, which it contends, nevertheless, that it is not, the accident being wholly chargeable to the conduct of those on board of said schooner.

Third. To the third allegation this respondent saith that
15 the said steamer Carroll is the property of this respondent, and was on a voyage from New York to Baltimore, and instead of going at unusual speed at the time of the accident was going at but half her usual speed, the captain directing the engine to be slowed, so as not to reach the mouth of the Patapsco river before daylight; the steamer's speed at the time did not exceed six miles an hour, or seven at most.

Fourth. To the fourth allegation this respondent saith that it

knows nothing of the amount of damage done to the said schooner, or of the charges specified in the account annexed to the said libel; but prays that strict proof may be required thereof, should the court hold the respondent responsible.

Fifth. To the fifth allegation this respondent saith that the said collision was the result of no want of care of the persons on board the said steamer, and that all proper care was taken by them in the premises, and that the said collision was the want of proper care on the part of those in charge of the said schooner, or some of them, and is to be attributed wholly to their default and neglect.

Sixth. To the sixth allegation, that the said libel is true in its statements, this respondent saith that it is not; and respectfully insisting that the said steamer Carroll should not be detained by reason of anything in the said libel contained, this respondent prays that she may be discharged, and that this respondent may
16 have its reasonable costs in this behalf unjustly sustained.

JNO. H. B. LATROBE,
Proctor for Respondents.

UNITED STATES OF AMERICA,
District of Maryland, State of Maryland, City of Baltimore:

On this 26th day March, 1866, before the subscriber, commissioner of the United States in and for the above district, personally appeared Samuel C. Lennan, captain of the steamer Carroll, and made oath to the truth of the facts stated in the foregoing answer.

SAM'L C. LENNAN.
HUGH DAVEY EVANS,
Commissioner in U. S. Courts.

Deposition of Captain Samuel C. Lennan, witness for the respondent, taken before Andrew Sterett Ridgely, esqr., U. S. Comm'r for the Maryland district, at the city of Baltimore, on the tenth day of April, 1866.

I was, on the 9th of Nov., 1865, master of the steamer Carroll. On the night of the 21st of Dec'r last I was in the Chesapeake bay, on my way from New York city to Baltimore. I recollect a collision with the schooner Loon, which took place between half-past one and two o'clock of the morning of the 22d of December last, about off Point No Point, in the Chesapeake bay. The weather at that time was somewhat cloudy, and the wind was north northwest, and
17 was blowing fresh, and what is called a northwest gale of wind. The steamer's course at that time was north by west, and her speed was about six and a half to seven knots. I was below myself, asleep, when the collision took place, and the deck was in charge of the first officer, John L. Ashcomb. I was aroused by the concussion of the vessels coming together, and the shout of one of the men on deck that the steamer was sinking, or something to that effect. I immediately went on deck and saw a schooner on our port bow, somewhere near abreast of our main rigging. I spoke a few

words with the officer of the deck, and gave him an order, or some one else near me, to go below into the fire-room, and see if the steamer was making water. I then went down into the cabin to dress myself, and when I returned on deck the vessels had seperated. The schooner had been capsized, and I ascertained that one of the schooner's crew was on board the steamer, and I found that the rest were coming in a boat to the steamer. I took them aboard, and proceeded on up the bay. I think the cap'n of the schooner, or some one else, asked me if I could take the boat in tow, and I told him I could not. My reason was that I did not desire that the tow-line of the boat should foul with the propeller. I do not recollect mentioning this reason to the captain at the time. The weather was very cold, among the coldest nights we had during the winter.

18 About seven o'clock in the evening I went in the engine room, and as there were many vessels in the bay, and as I did not wish to reach the mouth of the river before daylight, I directed the engineer to run at half speed.

Cross-examined.

I had been in bed before the collision; from 9 o'clock, or between nine and ten. When I speak of speed, therefore, it is an inference from my giving the order to the engineer at seven o'clock, as above stated. At the time I declined to take the boat of the Loon in tow I had already a boat in tow, which was a boat of a schooner with which we had come in collision at an earlier part of the night. The effect of the first collision was the sinking of the schooner, whose name was, as I understood, Elijah Spedden. I did not find that the rope which connected this schooner's boat to the steamer fouled with the propeller. I would also here state that I had great trouble in making that boat fast. I made two attempts to hoist her on board in vain, and the captain, being so anxious to save his boat because it was a new one, I consented to tow it. I had considerable difficulty in making her fast so as to tow her. We left the boat which we refused to tow behind, after we had taken from her the men. She was abandoned.

Re-examined.

I was on deck when the captain of the schooner came aboard of the steamer. I had no conversation on deck with the captain that I

19 can now recall, except that already stated in reference to towing his boat; but when I went into the cabin with him, he stated that he could not port his helm on account of jibeing his sails, when by putting his helm to starboard, as he did do, he did the very thing that did jibe his sails.

SAM'L C. LENNAN.

Deposition of John B. Lowell, witness for the respondent, taken before Andrew Sterett Ridgely, esq., U. S. Comm'r for the Maryland district, in the city of Baltimore, on the tenth day of April, 1866.

And the said John B. Lowell deposeth and saith as follows: I was on board of the steamer Carroll on the night of the collision with the schooner Loone, and was the chief engineer of the steamer. At the time of the collision I was standing on deck, in the waist. I came on deck by hearing an order repeated by the wheelsman to port. As I got on deck I heard the officer of the deck give the wheelman the order to hard-a-port. I walked on the port side of the steamer as far as the engine-hatch, and there met the officer of the deck, Mr. Ascom, coming off the bridge. I saw a vessel on the port bow, steering nearly an opposite course to ours. I then told the officer of the deck that I would stand by the bells for him. He immediately gave me an order to stop and back the engines, which was immediately obeyed. All this time I kept my eyes on the
20 port bow. Saw her sails jibe, and the vessel, which was a schooner, fly around quickly with her head to the eastward, apparently determined to cross the steamer's bow, and struck the steamer between the cut-water and fore rigging. The engines were backing as strong as possible at the time.

(Witness is here shewn a drawing, which he identifies as having been drawn by himself, and which is hereto annexed.)

This drawing represents the steamer on a north by west course, and represents the schooner on a south by east course, the wind about north northwest, which would bring the wind on the schooner's starboard quarter. At the time of the collision the steamer was heading nearly a northeast course from putting the wheel to port to clear the schooner, the schooner heading nearly east. As seen from the steamer the schooner would bear, when I first saw her, on the port bow one point, and her sails were on the port side. At the time of the collision her sails were on the starboard side. The drawing is intended to represent the positions of the vessels at the respective times marked upon it. The schooner had on deck a load of hay.

Cross-examined.

The schooner from us, when I first got on deck of the steamer, was distant about five or six lengths of the steamer. The length
21 of the steamer was, I guess, about 250 feet, and her tonnage, by registry, is about 1,000 tons. We had on board the steamer a general cargo from New York. She was not quite full. When I came on deck I was not on duty; I had been relieved. Mr. Ascom was first officer of the steamer, and had the watch of the deck, and is a Baltimore branch pilot, and was regularly attached to the steamer. The difference of time between my first seeing the schooner and the collision, I think, was three or four minutes. I paid no particular attention to the time. The steamer's course had

been altered before I got on deck. The effect of the order to port the helm was to throw the steamer's head towards the northeast. This turned the head of the steamer from its original direction about one point, and the order hard-a-port changed it about four points. I can't say what length of time elapsed, nor what distance the steamer travelled from the time the order was given to port the helm until the collision occurred. The cut-water of the steamer was knocked by the collision from the port to the starboard side. I can't say, however, whether this was done by the collision with the Loone or the Elijah Spedden. The Loone struck too far abaft of the cut-water, I think, to have effected it. I know of no other damage to the steamer from either collision; nor do I know what damages was done to the schooner; but her crew left her and came aboard the steamer. I was nearly midway of the vessel when the
22 collision took place, and perhaps an hundred feet from the point of the collision. I went forward after the vessels were separated, and hailed one of the men, who were in the forecastle, and asked him to ascertain whether the steamer had incurred any damage, and whether she was making water. I ascertained through him that there was no damage.

JOHN B. LOWELL.

The drawing referred to in the foregoing deposition is as follows, to wit:

[Here follows map, marked page 22.]

23 Deposition of Thomas H. Jordon, witness for the respondents, taken before Andrew Sterett Ridgely, esq., U. S. comm'r., for the Maryland district, at the city of Baltimore, on the 10th day of April 1866.

And the said Thomas H. Jordon makes oath, deposeth and saith, as follows:

I was the lookout on the steamer on the right of her collision with the Loone. I saw the Loone before we struck her, about fifteen minutes; I mean her lights. She was then bearing about one point or a point and a half off our port bow. I reported the lights to the officer of the deck, Mr. Ascom. He said very good, and I turned my eyes towards the lights again. If the vessels had kept on their respective courses as I first saw them, the collision would not have occurred. When I first saw the sails of the schooner they were on the port side; she was coming down pretty fast, as there was a good stiff breeze, about ten knots; I could not say what course the schooner was sailing, as I was not at the binnacle. The course of the steamer was changed about four or five minutes before the collision.

Being asked what caused the collision, the witness says: The schooner jibed her sails, which must have been owing to helm being put to starboard, which brought her head to the eastward. The steamer was struck between the fore-rigging and cut-water. My atten-
24 tion was not withdrawn from the schooner, from the time I reported her until the collision. After I had reported the

№177 { The Steamer "Carrock" of Green

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schooner, the order given on on board the steamer was to port the helm. At the moment of the collision I was between the foremast and capstan, forward of the foremast. From the position of her sails, (being asked,) what portion of the schooner struck the steamer? Ans. It was a little on the schooner starboard bow that the schooner struck the steamer. I could not look down on the schooner's deck, and could only judge from the position of her masts and sails.

Cross-examined.

The steamer has two decks, and I was standing on the upper deck when I first saw the schooner. The upper deck runs to the bow of the steamer. The bow was about two feet and an half above this deck. When I first saw the schooner I was standing on the deck, about ten feet from the bow, where I remained until the collision, when I jumped to the other side of the deck, fearful that the schooner's mast might fall upon me.

Being asked to state why he felt apprehension about the falling of the schooners mast, if in point of fact the schooner ran against the steamer, he says he thought the sudden jar might result in the falling of the masts. At that time there was no one forward on the lookout but myself.

his
THOMAS H. + JORDAN.
mark.

Deposition of Charles W. Fuller, a witness for the respondents,
25 taken before Andrew Sterett Ridgely esq., U. S. comm'r. for the Maryland district, at the city of Baltimore, on the 10th day of April, 1866.

And the said Charles W. Fuller makes oath, deposeth and saith, as follows:

I was second officer of the steamer on the night of the collision of the steamer Carroll and schooner Loone. I was in my state room at the time, and heard the first officer give the order to the wheelsman to to put his helm hard-a-port. I then went out of state room into the cabin and put on my boots and went up then on deck, and just as I got on deck the two vessels came together. I went forward and saw a schooner in collision with us on the port bow; I then walked aft, and when I got there I saw that the vessel had gotton clear. The captain then gave me an order to go down into the shaft alley, to see if the vessel was making any water, and I found she was not. From what I saw of the collision, looking down upon the schooners' deck, the schooner's starboard bow struck the steamer's port bow. The schooner had a deck load of hay.

CHARLES W. FULLER.

Deposition of Thomas H. Barrett, witness for the respondent, taken before Andrew Sterett Ridgely, esq., U. States comm'r. for the Maryland district, at the city of Baltimore, on the 10th day of April, 1866.

26 And the said Thomas H. Barrett deposeth, as follows: Was assistant engineer of the Carroll on the night of the collision with the schooner Loon, and my position was in the engine room, and I did not see the collision. Prior to the collision we were running at about half speed, which run I received as an order from the chief engineer, before he left the engine room, which he left at o'clock. Immediately before the collision I rec'd the orders by the bell to stop the steamer and back her, which I immediately obeyed. After I had received orders by the bell to go ahead again, I went into the drum-room to look at the heighth of the water in the boilers. There were three or four of the crew of the Loon standing in the drum-room. The chief engineer asked one of the men, who were colored, who had the helm of the schooner, and one of them spoke up and said he had it, and was the only one who was on deck at the at the time. He told the chief engineer that when he saw the steamer's light he steered for it, until he got so close that, from the hay in front of him, he lost sight of it. He then, he stated, called the captain, who was below in bed asleep. The captain came on deck and put the helm hard-a-starboard.

Cross-examined.

We can reverse the Carroll while running at slow speed in about twelve seconds, but cannot say how long it takes to overcome the forward movement of the vessel. I rec'd orders from the bell to back, and did so. I can't say whether the vessel was going ahead or back at the time of the collision.

THOS. H. BARRET.

27 Deposition of John L. Ashcom, witness for the respondent, taken before Andrew Sterett Ridgely, esq., U. S. comm'r for the Maryland district, at the city of Baltimore, on the 20th day of April, 1866.

I am a Baltimore branch pilot, and was first officer of the steamer Carroll in December last, when on a voyage from New York City to Baltimore. I remember the collision of the steamer with the schooner Loon, on the night of the 21st of Decr., 1866. I had charge of the ship at the time of his collision, and was standing on the bridge, which is an elevated place, some six or eight feet above the deck, amidships, and is for the officer of the deck on the lookout. The man on the lookout forward crying out "light" on the port bow." I took the night glass, and made the light to be her port light—a red light on the schooner. I then gave the order to port the steamer's wheel to give the schooner more room, which was done. The steamer's

head fell off a couple of points, and I slowed the engines. Finding that the schooner was swinging with a starboard helm, her head to the port, I stopped the steamer. I then gave orders to the chief engineer to back the ship, who was on deck at the time. The chief engineer attended the bells and backed the ship when I gave the order. I then told the watch on deck to sing out to the schooner to port his wheel. I can't say whether he heard the
28 watch or not; but instead of porting his wheel, he put it to starboard and jibed his main boom from port to starboard—the wind blowing fresh at the time, and the schooner coming about seven or eight knots, and the steamer going between nine and ten. This speed of the steamer was that before I backed her. At the time of the collision, she could not have been going over a knot or a knot and a half, the engines being reversed at the time. When I got forward, the main rigging of the schooner was about the cat-head of the steamer. I then sung out to the men on the schooner to get into their yawl boat and come on board, as all our boats were on the deck. What took place on deck afterwards I don't particularly recollect, as I returned to my place on the bridge.

If the schooner had kept the course she was on, when I first discovered her, there would not have been a collision; and if the schooner had put her helm to port instead of to starboard, there would have been no collision. If the schooner had held her course when I ported the steamer's wheel the vessels would have passed each other half a mile a part. When I was standing on the bridge, and looking forward, the schooner was seen between the port cat-head and bow sprit, about half a point on the steamer's port bow. A point is eleven
29 and a quarter degrees. I was keeping a good lookout on that night as ever I kept in my life, particularly watchful as the steamer had already had a collision with another schooner. I had a good lookout forward, a good man. Our port and starboard and mast head lights, which form together a triangle, were all up and burning at the time of the collision; and of this I am certain, because after the collision I looked at the lights and saw them all burning.

Cross-examined.

When I first saw the schooner [the schooner] the steamer was heading north by west by the compass, and at the time I was standing on the bridge, the compass being aft, alongside of the wheel, some thirty or forty feet from where I was standing. The wheel from the laff rail was about twenty-five feet from the bridge. The length of the steamer is about 207 feet.

Being asked the question, whether, when he first saw the schooner, he was able to discover how she was heading, he answers and says: She was heading down the bay. I could not exactly tell her course, but I saw her port light, and none other. I think she was heading south by east or thereabouts; when I first saw the schooner I judge she was from four to five miles from us.

Being asked the question, in how many lengths of the steamer

she could be stopped, he says: I can't answer the question precisely, for I never tried it, but I suppose in four or five lengths when going into a pier, previously going slow. As soon as I made the
30 schooner's light to be a port light, I gave the order to port the wheel, and it was done. It was about three minutes before the collision that the schooners boom jibed. At the moment of the collision, the steamers head was about east northeast, by the north star. The head of the schooner I can't tell how it was, but her starboard side was in contact with our port bow. The collision capsized the schooner. I did not see what injury was done to the schooner. I had been in the steamer about five months prior to the collision as first officer.

Re-examined.

When I first descried the schooner I could see the north star, and seeing it, I could tell very nearly the direction of the ship. I had looked at the compass previously, compared the position of the north star with the ship's course, and afterwards observed that the man at the helm was steering steadily.

JOHN L. ASHCOM.

Deposition of Wesley Egbert, witness for the libellant, taken before Andrew Sterett Ridgely, esq., U. S. comm'r for the Maryland district, at the city of Baltimore, on the third day of May, 1866.

I know the steamer Carroll, and was on board of her at the time when the collision between her and the schooner Loon, which occured on the morning of the 22nd December, 1865, at about or between the hours of 12 and one o'clock, in the Chesapeake, off Point No Point. I was taken on board the steamer
31 Carroll on the evening of the 21st Dec., 1865, about half-past seven o'clock, from the wreck of the schooner Elijah Spedden, of which I was master, and which has been run down by the Carroll; or rather I was taken from my yawl boat, which belonged to the Elijah Spedden, and the boat itself was towed by the Carroll to Baltimore. At the time of the collision between the Carroll and the Loon, I was forward on the deck of the steamer about 20 feet from the stern on the port side, close down to or against the railing. I saw men around on the deck on board said steamer who were running around singing out "hard-a-port." I saw no special lookout on board the Carroll; when I first saw the "Loon" she was about three or 4 hundred yards off, ahead of the steamer, a little off her port bow, showing a green light. I did not see the compass, but from the north star I judge that the steamer was heading about northeast or northeast by east at that time. It was a clear night. She, the steamer, was still bearing off to the eastward, her helm being hard-a-port. The vessels were then nearing each other; the course of the schooner, as near as I can judge, being south southeast or southeast at that time. The vessels still nearing each other came in collision. The schooner was struck on her starboard side by the steamer's stern, and filling

with water capsized or sunk. As near as I could judge the schooner was struck at a point somewhere about 20 feet from her stern.

32 Being asked the question "what, if any, experience he has had in the navigating of vessels?" the witness replied, "about thirty years." Being then asked whether from his position on board the steamer he was able to form, in his opinion, a just judgment of the cause of the collision? The witness replied "that he was." Being then asked to state the cause of collision, he answered that the collision was, in his opinion, caused by the steamers having put her helm hard-a-port. Had she have kept her course she would have cleared the schooner perhaps by a hundred yards or more.

Question. Did you see the steamer's mate on deck at the time of the collision?

Answer. I can't say positively that I saw him on deck at the time of the collision. I saw him afterwards. I can't say that I could distinguish him from any other man until after the collision. After the collision I heard the mate say to the captain of the "Carroll" this is four vessels we have come near running into, already running over two and coming near running over two more, and added that the vessels are all running in our way. The captain replied, if we can't do better than running over any more we will stop ship until daylight.

On cross-examination by the proctor for respondent, the witness further stated, in reply, that he did not look at the steamer's compass, he judged of the course of the vessels from the stars.

WESLEY EGBERT.

33 Deposition of Capt. James Edmondson, witness for the libellant, taken before Andrew Sterett Ridgely, esq., U. S. comm'nr for the Maryland district, at the city of Baltimore, on the 12th May, 1866.

I was captain of the schooner Loon which was owned by Capt. John M. Green, and am still her captain. I became such captain last September, one year since, and have been such captain ever since that time. I started from the port of Baltimore on the 21st of Dec'r., 1865, about one quarter before 4 o'clock p. m., bound on a voyage up James river to Hog island, laden with an assorted cargo; my crew were Daniel Travers, Jacob Henry, and a cook, whose name I never knew. The two hands Henry and Travers were fine men. We proceeded down the bay to off Point No Point, where we discried a steamer about a quarter of a mile ahead of us. I was steering south by east; the steamer bearing from the schooner about point westward from my course. The steamer was coming up the bay. I was standing aft the schooner, looking out, with all the men on deck. I was standing aft by the side of the wheel. This was between one and two o'clock of the morning of the 22d of Dec'r last. The wind was about north northwest, and I was running from seven to eight knots an hour, I judge. The night was pretty. My lights were burning and were properly suspended. I had a green and

34 a red light; both were on the fore-rigging; one on each side. I saw but one light on the steamer, which was her signal light, and was on her foremast. I was steering my course down, south by east, which was my proper course. The steamer, if she had her course, ought to have passed me two or three hundred yards to the westward. I told my man at the helm not to alter his course, but to hold it. The steamer, just before she got opposite to me, hauled right across the bay, and when she struck me I judge she was going an east course; she struck me right forward of the fore-rigging and went two-thirds of the way through and across the schooner; she cut down to the garboards streak, which is the plank next to the keel. The effect of the collision was to knock me over the wheel; it was a hard blow. The schooner capsized and sunk in about five minutes after she had been struck; when the steamer backed from her she went right over; one of my crew jumped aboard of the steamer, and I got my boat loose and took my two men with me into the boat and pulled to the steamer, on board of which we got and came to Baltimore. I requested one of the officers of the steamer to bring my boat to Balt., but he refused. He gave no reason for refusing, but sung out to us to get out of the boat and let her go, which we did. The boat was lost and I have never heard of her since. I had on board the schooner oats, bran, hay, flour, pork, beef, hauling seines, and some rope, (rigging,) sugar, coffee, molasses, and
35 tar. I had a yawl boat also on board, which belonged to the same parties that the rest of the cargo did, and I had also some hogs (alive) on board. There were also some boxes of axes and axe helves aboard, and fishing rods; some twine, and a barrel of decoy ducks were also aboard, and several other articles which I cannot now enumerate. All of her cargo went down with the schooner. I had one tier of hay on deck; the bales were small and their height about three feet.

Cross-examined.

The tonnage of the schooner is seventy-five, with a flush deck, and a trunk about two feet and a half over the cabin. The hay was not on the trunk, nor aft it, nor alongside of it; but it was all forward of it. I was standing on the starboard side of the wheel, about two feet from the starboard rail. When I first saw the steamer it was over our starboard bow, and to the westward of the fore-rigging. I had my coat on when I went aboard of the steamer, but no shoes or hat on, for I had lost them. I lost one of my shoes when I went forward on the hay; the other fell off when I jumped into the yawl-boat, to cut her loose; my hat blew off on my way to the steamer. I had not turned in that night, but I had pulled off my coat when I went into the cabin to warm myself. I was not called on deck by the man at the wheel, and told the steamer was in sight. When I found that the steamer was coming between our masts
36 I told the man at the helm to starboard his helm, because I knew that the steamer would cut us in two, and we all would

likely be drowned. In consequence of my putting my helm to starboard the blow of the steamer was received forward of the fore-rigging. I never gave the order to starboard the helm until the bow of the steamer was about to shut by our foresail; by shutting by our foresail, I mean the bow of the steamer was shut out by my foresail, which boomed on the starboard side.

Question. What was the distance from the schooner to the steamer when you gave the order to starboard the helm?

Ans. I don't think she was over twenty feet from us.

Question. How far was the schooner from the steamer when you saw the steamer begin to haul her course to the northward and eastward?

Answer. I suppose she was from seventy to an hundred yards from us when I saw her beginning to haul her course across the bay.

Question. Did you at that time change your helm?

Ans. I did not; but kept my direct course.

Question. If you had then put your helm to port would you not have avoided the steamer?

Answer. No, sir; but I would have run right into the steamer.

Question. Did the Loon answer her helm quickly?

Answer. Yes, sir; she quickly answered her helm, and generally was quick to answer it.

37 Question. Were you going down the bay at the time you saw the steamer Wing and Wing.

Answer. Yes, sir; I was.

Question. What is the length of the Loon?

Ans. She is 84 feet on deck.

Question. In how many lengths would she come around so as to go off at right angles?

Answer. In about two lengths, if not blowing too heavy.

Question. What is the width of the schooner aft on a line with the wheel?

Answer. About sixteen feet from side to side.

Question. Was your jib set?

Answer. The jib was set.

Question. When the helm was put a-starboard did the mainsail jibe?

Answer. It did, from larboard to starboard, until the steamer hit.

Re-examined on the part of the libellant.

Question. In your examination-in-chief you spoke of three colored men. Where are they now?

Answer. Two of them are here; the other I have not seen since the day I arrived in Baltimore, and I do not know where he is. He was the cook.

JAMES EDMONDSON.

38 Deposition of Daniel Travers, witness for the libellants, taken before Andrew Sterett Ridgely, esq., U. S. comm'r for the Maryland district, at the city of Baltimore, on the 12th day of May, 1866.

Question. Were you on board the schooner Loon in December last, when a collision took place between the steamer Carroll and said schooner? If you were, what was your duty on board of said schooner?

Answer. Yes, sir; I was on board the schooner, and was as look-out; and saw the steamer; I was forward of the foremast.

Question. Did you see any lights on the steamer?

Answer. I saw only one light, and that appeared to be a high light. It was a bluish kind of light.

Question. Had you any lights on board the schooner?

Answer. Yes, sir; we had two lights up; I put them up myself.

Question. Where were you standing when the steamer struck the schooner?

Answer. When the steamer was about to strike us I ran aft to the galley, about midships.

Question. Are you able to say in what way—that is, in what direction, the steamer struck the schooner?

Answer. The steamer seemed to me to be coming from the westward, directly to the eastward.

Cross-examined.

39 I went into the little boat, over to the steamer, after the accident; I suppose we were about three quarters of a mile from the steamer when I first saw her light. We were about three hundred yards from the steamer when the captain cried "starboard the helm." When I first saw the steamer I was standing about midships of the schooner. When I first saw the steamer, I saw her over the starboard bow, and reported her to the captain. When we first saw the steamer she appeared to be steering across the bay; and the schooner kept her course until we got nearer, and then we starboarded the helm, to ease the blow. Our object in starboarding the helm was to bring the vessel's broadside on.

his
DANIEL + TRAVERS.
mark.

Deposition of Jacob Henry, witness for the libellant, taken before Andrew Sterett Ridgeley, esq., U. S. comm'r for the Maryland district, at the city of Baltimore, on the 12th May, 1866.

I was on board the Loon in December last, when the collision took place between her and the steamer Carroll. I shipped before the mast as a full hand. When I first saw the steamer I was steering. The steamer was then, I think, about three hundred yards distant. Our course was down the bay, and I was steering south by east. The steamer was coming a little to westward of us, about half a

point, when I first saw her. She then seemed to be heading about east, as near as I can come at it. I saw but one light on board the steamer, which was a signal light. We had both lights on our schooner. The steamer struck the schooner a little forward of her fore-chains, and cut her into the keel. The steamer was about a quarter of a mile from us, as near as I can come at it, when the captain gave me the order to starboard the helm.

(Being asked the question, "How many yards are in a quarter of a mile, as you suppose?" he answers, and says:)

I don't know; from the time that I first saw the steamer until I starboarded my helm, was, as near as I can come at it, about twenty or thirty minutes.

Cross-examined.

I went on board the steamer after the accident. I was there asked questions, but I made no replies. The reason I made no replies was, that at such a time, when a man is in distress, he is very apt to say things that he knows nothing about. I was not scared when on board the steamer.

(Being asked the question, "Jacob, when you were on board the steamer, and down below, did you not say that the captain came on deck just before the accident, and told you to put the helm hard-a-starboard," he answers and says:)

The captain did tell me to put the helm hard-a-starboard, but I did not say this on board the steamer.

Question. Did you not tell them on board of the steamer that you steered for the light of the steamer?

Answer. I told them no such thing; and I steered by the course the captain gave me.

Question. Did you not say on board of the steamer that the captain came on deck just before the accident?

Answer. No, sir; I did not.

Question. Did not the captain, in fact, come on the deck just before the accident?

Answer. He had been on deck two hours before the accident occurred.

Question. Did you not tell them on board of the steamer that all hands were below, except yourself, at the time of the accident?

Answer. No, sir. In steering I stood on the starboard side of the wheel. I saw the steamer on the starboard bow, heading about east, across the bay.

his
JACOB × HENRY.
mark.

In the District Court of the United States in and for the district of Maryland.—In Admiralty.—June term, 1866.

Decree.

JOHN M. GREEN
vs.
THE BALTIMORE & OHIO RAILROAD COMPANY, claimant of the steamer Carroll.

The above cause being ready for hearing, and having been
42 fully argued by the proctors for the respective parties, and the amount claimed by the libellant in Exhibit A, filed as part of his libel, being admitted to be correct, in case the court here should decide in favor of the libellants, it is thereupon, this 18th day of June, 1866, by the District Court of the United States in and for the district of Maryland, adjudged, ordered, and decreed, that the Baltimore & Ohio Railroad Company, claimant of the steamer Carroll, pay to the libellant the sum of fifty-nine hundred and seven dollars and sixty-six cents, with interest thereon, from the first day of March, 1866, and the costs of suit.

WILLIAM F. GILES.

From which said decree, so as aforesaid passed, the claimants of the said steamer Carroll, by their proctor, in open court here, prayed an appeal to the Circuit Court of the United States, for the fourth circuit, in and for the Maryland district, to be held at the city of Baltimore on the first Monday in November next; and to them it is granted.

Thereupon it is ordered by the court here, that the record and proceedings aforesaid, with all things relating to the same, be transmitted to the said Circuit Court, and the same are hereby transmitted accordingly.

43 *Appeal Bond.*

Know all men by these presents that we, The Baltimore & Ohio Railroad Company, and John W. Garrett and J. J. Atkinson, are held and firmly bound unto John M. Green in the just and full sum of eleven thousand nine hundred dollars lawful money of the United States, to be paid to the said John M. Green, his heirs, executors, administrators, or assigns, to which payment well and truly to be made and done, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this tenth day of August, in the year of our Lord one thousand eight hundred and sixty-six.

Whereas heretofore, to wit, on the first day of March, in the year 1866, John M. Green filed his libel in the District Court of the United States in and for the Maryland district against the steamer Carroll, in a cause of collision, civil and maritime.

And whereas, at a District Court of the United States in and for the Maryland district, begun and held at the city of Baltimore, on the first Tuesday in June, in the year of our Lord one thou-
44 sand eight hundred and sixty-six, by the decree of the said court the libellant recovered the sum of five thousand nine hundred and seven dollars and sixty-six cents, with interest from 1st March, 1866, and costs, from which said decree, so as aforesaid, the owners of the steamer Carroll have prayed an appeal to the Circuit Court of the United States for the fourth circuit in and for the Maryland district, to be held at the city of Baltimore, on the first Monday in November next:

Now, the condition of the above obligation is such, that if the owners of the steamer Carroll shall well and truly prosecute with effect their said appeal, and pay to the said John M. Green the amount of his said decree, interest, costs, and charges decreed unto him by the said District Court; and also all such damages, costs, and charges as may be awarded unto him by the said Circuit Court; in case the said appellants shall fail to make good their said appeal, then the above obligation to be void and of none effect, otherwise to be and remain in full force and virtue in law.

[SEAL.] JOHN W. GARETT, *Prest.*
[SEAL.] JOHN W. GARETT.
[SEAL.] J. J. ATKINSON.

45 SEAL OF THE BALT. & OHIO RAILROAD.

Signed, sealed, and delivered in the presence of—
ANDREW ANDERSON.

[U. S. 50 cents int. rev. stamp.]

Bond approved 18th August, 1866.

WILLIAM F. GILES.

In testimony that the aforegoing is a true copy taken from the record and proceedings of the District Court aforesaid, I have hereunto subscribed my name and affixed the seal of the said District Court, this eighteenth day of August, in the year of our Lord one thousand eight hundred and sixty-six.

[SEAL.] JAMES W. CHEW,
Clerk District Court.

[U. S. 5-cent int. rev. stamp.]

In the Circuit Court of the United States in and for the fourth circuit and district of Maryland.

Decree.—Appeal from the District Court of Maryland.

THE CLAIMANTS OF THE STEAMER CARROLL, appellants,
vs.
JOHN M. GREEN, appellee.

46 The appeal taken in this case from the decree dated 18th June, 1866, passed by the District Court of the United States for the district of Maryland, to the Circuit Court of the United States in and for the District of Maryland; and the cause as appealed from, having been submitted for hearing and decision by this court, now being held by me, district judge, in the absence of the chief justice of the United States, and the same having been heard and considered, it is thereupon, this 30th day of May, 1867, by the Circuit Court of the United States in and for the fourth circuit and district of Maryland, held as aforesaid, adjudged, ordered, and decreed that the said decree be, and the same is hereby, approved in all things, with costs to be paid by the appellant.

WILLIAM F. GILES.

From which said decree, so as aforesaid passed, the claimants of the said steamer Carroll, by their proctor, in open court, prays an appeal to the Supreme Court of the United States, to be held at the city of Washington, on the first Monday in December next; and to them it is granted.

Therefore it is ordered by the court here, that the record and proceedings aforesaid, with all things relating to the same, be transmitted to the said Supreme Court, and the same are hereby transmitted accordingly.

47 *Appeal bond.*

Know all men by these presents that we, The Baltimore and Ohio Railroad Company, and John King, junior, are held and firmly bound unto John M. Green in the full and just sum of twelve thousand dollars, lawful money of the United States, to be paid to the said John M. Green, his certain attorney or assigns, to the which payment, well and truly to be made and done, we hereby bind ourselves, our heirs, executors, administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 15th day of July, in the year of our Lord one thousand eight hundred and sixty-seven.

Whereas, at a District Court of the United States in and for the Maryland district, begun and held at the city of Baltimore, on the first Tuesday of June, in the year of our Lord one thousand eight hundred and sixty-six, the said John M. Green, by the decree of the same court, recovered against the Baltimore & Ohio Railroad Company, claimants of the steamer Carroll, the sum of five

thousand nine hundred and seven dollars and sixty-six cents, with interest from 1st March, 1866, and costs, from which said decree, so as aforesaid passed, the said Baltimre & Ohio Railroad Company, claimants as aforesaid, prayed an appeal to the Circuit Court of the United States for the fourth circuit
48 in and for the Maryland district, to be held at the city of Baltimore, on the first Monday in November then next; and whereas also, at a Circuit Court of the United States for the fourth circuit in and for the Maryland district, begun and held at the city of Baltimore, on the first Monday of April, in the year of our Lord one thousand eight hundred and sixty-seven, by the decree of the same court, the said decree of the District Court aforesaid was affirmed, with costs, from which said decree, so as aforesaid passed, the said Baltimore & Ohio Railroad Company, claimants as aforesaid, hath prayed an appeal to the Supreme Court of the United States, to be held at the city of Washington, on the first Monday in December next.

Now, the condition of the foregoing obligation is such, that if the said Baltimore & Ohio Railroad Company shall well and truly prosecute with effect its said appeal, and pay unto the said John M. Green, his certain attorney or assigns, the amount of the said decree, costs, and charges aforesaid of the said District and Circuit Courts aforesaid, and all such damages, costs, and charges as may be awarded unto him by the said Supreme Court; in case the said appellant shall fail to make good the said appeal, then the said obligation to be void and of none effect, otherwise to be and remain in full force and virtue in law.

[SEAL OF B. & O. R. R. CO.] JOHN KING, JR.,
V. P. B. & O. R. R. Co.

[SEAL.] JOHN KING, JR.

49 Signed, sealed, and delivered in the presence of—

———— ————.

"Bond approved July 15th, 1867.

WILLIAM F. GILES."

In testimoney that the aforegoing is a true copy taken from the record and proceedings of the Circuit Court aforesaid, I have hereunto subscribed my name and affixed the seal of the said Circuit Court this 26th day of July, in the year of our Lord one thousand eight hundred and sixty-seven.

[SEAL.] JAMES W. CHEW,
Clerk Circuit Court.

[5-cent revenue stamp.]

In the Supreme Court of the United States.

THE STEAMER CARROLL,

(*The Baltimore and Ohio Rail Road Company, claimant,*)

vs.

JOHN GREEN.

Appeal from the Circuit Court of the United States for the District of Maryland, in affirmance of a Decree of the District Court of said District.

This is a case of collision between the Steamer Carroll, bound up, and the Schooner Loon, bound down the Chesapeake Bay, near Point no Point, on the night of the 22d December, 1865. The Schooner was seventy-five tons burden; the Carroll a large steamer, on her way from New York to Baltimore.

There being no doubt as to the fact of a collision, it is important to establish the relative positions of the vessels before and at the time they came in contact.

There is little question that, when the Schooner was first observed from the Steamer's deck, the vessels were from four to five miles apart. (*Ashcom's testimony, p.* 14 *of record.*) Jacob Henry, on board the Schooner, at p. 20, says that it was *twenty or thirty minutes* after he saw the Steamer before he starboarded his helm, from which it might be inferred that he saw the Steamer as soon as the Steamer saw the Schooner; but he had already said in so many words. (p. 14,) that "when I first saw the Steamer I was steering. The Steamer was then, I think, about three hundred yards distant;" therefore, his subsequent reference to twenty or

thirty minutes can hardly be relied on. Jordan, on board the Steamer, says the Schooner was seen fifteen minutes before the collision, (p. 10.)

At this time, the Steamer's course was North and by West, (*see Captain Lennan's testimony, p.* 14,) and the Schooner's South and by East, (*see Captain Edmondson's testimony, p.* 16, and *Jacob Henry's, p.* 19.) Egbert says the Steamer was steering North East and by East; but he evidently refers to her course just before the collision, for a Northeast and by East course would have carried the Steamer across the Bay and not up it. The context of his testimony proves this. (*See p.* 15 *of record.*)

It may therefore be assumed, that the two vessels were steering on parallel lines in opposite directions.

Jordan, the lookout on board the Steamer, says, (p. 10,) that when first seen the Schooner was a point and a half on the Carroll's *port bow.* Ashcom, (p. 13,) says, that when he took the glass he saw the Schooner's *port light—a red light*—which he could not have done, unless the schooner had been as decribed by Jordan, on the port bow, or to the westward of the Steamer.

Lowell, the chief engineer, saw the Schooner three or four minutes before the collision, on *the port bow*, and always saw her on the port bow up to the time of the collision.

Egbert, the passenger, says, (15,) that when he first saw the Loon, she was about three or four hundred yards off ahead of the Steamer, a little on her port bow, showing a green light. Ashcom says it was off the port bow, shewing a *red* light. If the testimony of those on board the Schooner is correct as to the course she was steering, the *red* light is the only one the Steamer could have seen if the Schooner was off her port bow. Egbert's view must have been shortly before the collision, how ver, and not when the Schooner was first seen by the lookout.

This does not weaken the testimony of Jordan, Lowell and Ashcom as to the relative position of the vessels when first seen, but rather strengthens it by the admission that the Schooner was seen on the Steamer's *port bow.*

The Steamer was to the Eastward, then, of the Schooner when first seen, and the parallel lines on which they were steering, in opposite directions, were *half a mile* apart (*See Ashcom's testimony, p.* 14.)

This being so, had the two vessels held their respective courses they would, when abeam of each other, have been half a mile apart, and there would have been no possibility of a collision. The statement of Ashcom to this effect is uncontradicted, and is corroborated by the fact sworn to by the lookout, that the Schooner, when first seen, and when the vessels were some three or four miles apart, was seen a point and a half on the Steamer's port bow, which would by calculation give that distance when the vessels were abeam of each other.

If there was no possibility of a collision, or if the position of the vessels did not, in the language of the Act of April 26th, 1864, 'involve the risk of collision," then there was no reason for applying the rules laid down in that Act prescribing the duty of the Steamer in such an event.

But, even were it to be admitted that there was a doubt in this respect, and that the movement of the vessels, as they approached each other, *did* involve the risk of collision, what, in that case, was the duty of the steamer? It is prescribed in the Act as follows:

"Article 15.—If two ships, one of which is a sailing ship and the other a steamship, are proceeding in such directions as to involve risk of collision, *the steamship shall keep out of the way of the sailing ship.*"

Now, what is the testimony in this regard?

Ashcom, in charge of the ship at the time, says, p. 13, "I was standing on the bridge, which is an elevated place, some six or eight feet above the deck amidships, and is for the officer of the deck on the lookout. The man on the lookout forward crying 'light on the port bow,' I took the glass and made the light to be her port light, a *red light* on the Schooner. I then gave the order to port the Steamer's wheel to give the Schooner more room (*'to keep out of the way of the sailing ship,'*) which was done. The Steamer's head fell off a couple of points."

What more was the Steamer, if collision was still possible, required to do by the rules? It is prescribed in the 16th rule, as follows:

"Article 16.—Every steamship, when approaching another ship so as to involve risk of collision, *shall slacken her speed, or if necessary, stop and reverse.*"

What is the testimony in this connection?

"The Steamer's head," says Ashcom, (p. 14,) "fell off a couple of points, and *I slowed the engines.* Finding that the Schooner was swinging with a starboard helm her head to port, I stopped the Steamer. I then gave orders to the chief engineer to back the ship."

Corroborating Ashcom, Lowell, the chief engineer, says:

"At the time of the collision, I was standing on the deck in the waist. I came on deck by hearing an order repeated to the wheelsman *to port.* As I got on deck I heard the officer of the deck give the wheelsman the order to *hard aport.* I walked on the port side of the Steamer as far as the engine hatch, and there met the officer of the deck, Mr. Ashcom, coming off the bridge. I saw a vessel on the port bow steering nearly an opposite course to ours. I then told the officer of the deck I would stand by the bells for him. He immediately gave me an order to stop and back the engines, which was immediately obeyed." (The order to slow the engines had been given already, when the order to port the helm was given.) "I saw her sails," continues Lowell, "gibe, and the vessel, which was a Schooner, fly quickly around with her head to the eastward, apparently determined to cross the Steamer's bow, and struck the Steamer between the cutwater and forerigging. *The engines were backing as strong as possible at the time.*"

Ashcom gave the order to change the course of the Steamer when the vessels were four or five miles apart,—less the space gone over between the hail of the lookout, while Ashcom was using his glasses, and his order to port the helm and slow the engines. (p. 14.) Lowell hearing him give the order to port, came on deck and saw the Schooner *three or four minutes before the collision.* (p. 10.) If the two vessels were approaching each other at a combined speed of sixteen or seventeen miles an hour, the testimony of Ashcom estimating by miles, and Lowell by minutes, would correspond as nearly as might be expected. In addition we have Jordan's testimony, p. 11. "The course of the Steamer," he says, "was changed *four or five minutes before the collision,*" corroborating Ashcom and Lowell.

We thus have, then, the fact established, that when the Steamer saw the Schooner, say three or four miles off, the helm was put to port to keep out of her way, she being then on the port side, or to the westward of the former.

It is difficult to see how the rules prescribed by the Act of Congress, with regard to keeping out of the way, could have been more strictly observed than they were on this occasion.

The witness, Egbert, attributes the collision (p. 16) "to the Steamer's having put her helm 'hard aport.' Had she kept her course," he says, "she would have cleared the Schooner by perhaps an hundred yards or more."

In other words, according to Egbert, who says that he has had thirty year's experience in navigating vessels, the captain of the Carroll, seeing the Schooner approaching at the rate of seven or eight knots, while the Steamer was going at the same rate, about, and judging that the Steamer would go clear by an hundred yards, ought to have held her course! taking the chance of such a shave of the Loon as the Supreme Court in the case of the Louisiana, in 23 Howard, has said was not to be permitted.

Nor must it be forgotten that the fact of a previous collision, but a few hours before, was calculated to make the parties in charge of the Carroll especially careful, (see Ashcom's testimony; p. 14,) and so far from the previous collision operating to subject them to suspicion as careless navigators, it was that very circumstance which was calculated to make them, with the knowledge that all officers in command have of the Rules of Navigation, studious to observe them.

It is taken for granted, that, to exempt the Steamer from liability on this occasion, it is sufficient, ordinarily, to show a strict observance of the Rules.

But, it is admitted that if, even while the Steamer is observing the rules, the sailing vessel imprudently puts itself in the way of danger, it is still the duty of the Steamer to prevent the collision if she can—"to keep out of the way."

This duty was not forgotten here. It will be borne in mind, that, as the Schooner and Steamer were approaching, and still some miles apart, the Steamer's helm was put to port and she was swinging round to the eastward. Meanwhile, the Schooner put her helm to starboard, and the collision became almost inevitable. With the helm already to port, "hard aport," quickened of course the change of direction; *the engine already slowed was stopped and backed*, and had there been an instant more of time than there was, the two broadsides would have collided with but little damage to either, for, in point of fact, both vessels were at the time swinging to the eastward.

It is contended then, that, when, even in the strict observance by the Steamer of the rules, the collision, through the conduct of the Schooner, became unavoidable, the Steamer's conduct was unexceptionable.

It is clear, therefore, that the Steamer did not fail in its duty as prescribed by law. Did the Schooner fail?

The 18th rule is—

"When by the above rules, one of two ships is to keep out of the way, the other shall keep her course, subject to the qualification contained in the following article."

There was nothing to qualify the obligation in this case.

It was then the duty of the Schooner to have kept on her course; and yet the proof is that she changed it. And it is insisted that such change was not rendered necessary by any negligence on the part of those in charge of the Steamer; for it is not denied that if there was a necessity for a change brought about by the conduct of the Steamer, the latter cannot insist on the Schooner's failure to observe the rule.

The Captain of the Schooner says, that when he gave the order to starboard the helm, (p. 18,) "he don't think the Steamer was over twenty feet from the Schooner."

Daniel Travers, the look-out on board the Schooner, says, (p. 19) we were about three hundred yards from the Steamer when the Captain cried "Starboard the helm." And Jacob Henry, at the helm of the Schooner at the time, says, (p. 20,) "The Steamer was about a quarter of a mile from us, as near as I can come at it, when the Captain gave me the order to starboard the helm."

The Court will see that to break the force of this discrepancy, the witness was asked if he knew "how many yards were in a quarter of a mile, as he supposed," to which he answered, "I don't know; from the time that I first saw the Steamer, until I starboarded my helm, was as near as I can come at it about 20 minutes," which certainly did not help the matter; for, from contradicting the Captain he fell to contradicting himself.

Now, which of these witnesses are to be believed? The sailors contradict the Captain flatly with regard to the time when the order to starboard the helm was given. They cannot all three be right.

The Captain of the Schooner swears (p. 17) that just before the Steamer got opposite to the Schooner, "she hauled right across the bay." This was not the proper course for the Steamer. Her course was north by west, as the Schooner's was south by east—and the Steamer going off to the eastward could have had but one object, which was to avoid collision—unless, which it cannot be supposed, she meant to run the Schooner down; while, that it was her object to avoid collision is proved by Ashcom, Jordan and Lowell, and is in itself most probable.

Daniel Travers swears (p. 19) that when *he* first saw the Steamer, she appeared "to be steering across the bay."

This man was the lookout—and swears that, when he first saw the Steamer, she was about "three quarters of a mile" from the Schooner. And that, when he first saw her, he was "*standing about midships of the Schooner.*"

Jacob Henry swears (p. 19) that when he first saw the Steamer, she was "about three hundred yards distant." Although he says afterwards, that she was a quarter of a mile, or 437 yards, when the order was given to starboard the helm. This particular discrepancy is not important, however.

Captain Edmondson swears (p. 16) that when they descried the Steamer, "she was about a quarter of a mile ahead of us."

The two seamen had probably compared their recollections, and had agreed upon 300 yards as the distance from the Schooner to the Steamer when the latter was first seen. The Captain's quarter of a mile may be regarded as agreeing substantially with the testimony of his men on this point.

Reconciling these unimportant discrepancies in the testimony of the parties on board the Schooner, we have these facts. That the Steamer was not seen from the schooner, *until the* Steamer *was within from three to four hundred yards distant*—and this too on a night which the Captain of the Schooner swears was "pretty," and when, as proved by Ashcom, Jordon and Lowell, the Schooner could be seen by the Steamer, when there was a distance of more than four miles between them. (Jordan, the lookout, swears he saw the Loon fifteen minutes before she was struck, (p. 11,) and Ashcom that the two vessels were from four to five miles apart. (p. 14.)

It is in proof, as we have seen, that the lookout, *instead of being in the bow of the Schooner*, from which place he certainly could have seen the Steamer, as far as the lookout of the Steamer could see the Schooner, *was standing about midships of the Schooner*, and that, too, when she had a deck load of hay. (See Lowell, p. 10 as to deck load.)

That the lookout was remiss utterly in his duty, as well as out of his position, is most evident.

Henry waited until the Captain told him to starboard his helm.

When, then, did the Captain order the helm to be starboarded?

The Captain says (p. 18) that he ordered the helm to be starboarded when the Steamer was twenty feet from the Schooner.

The helmsman (p. 20) says the Steamer was three hundred yards off when the Captain gave the orders!

The lookout (p. 19) (if he can be called a lookout, when standing amidships,) says the Steamer was three hundred yards off when the Captain cried "Starboard the helm."

But this is not the only point on which the Captain is contradicted by the crew.

The Captain says (p. 18) the Steamer was *from seventy to one hundred* yards from us, when I saw her beginning to haul her course across the bay."

Travers says, (p. 19) "When I first saw the Steamer about three quarters of a mile off, she appeared to be steering across the bay."

Henry says, (p. 20) "When I first saw the Steamer she was then, I think, about 300 yards distant. "She then seemed to be heading about east, as near as I can come at it"—this course was across the bay, which is here nearly north and south.

How are these palpable discrepancies to be reconciled?

The men are to be believed, and the Captain must be believed to have been mistaken.

One of the sailors on getting on board the Carroll, told the chief engineer, in presence of the witness, Barrett, (p. 13) that when he saw the Steamer's *light he steered for it, until he got so close that from the hay in front of him*, he lost sight of it. He then, he stated, called the Captain, who was below, in bed asleep. The Captain came on deck, and put the helm hard astarboard.

If this is true, the whole case becomes plain—the helmsman saw the Steamer's light over the hay, without knowing that it was a steamer—the hay in front of him prevented his seeing low down on the water—when the Steamer's red light would have been

seen, for it is proved (p. 14) to have been burning. When the man amidships, who fancied that he was a lookout, reported the matter, the Captain came on deck as soon as he got his coat on, (p. 17) and the Steamer being then close at hand, and the two rapidly approaching each other, and when they were three hundred yards apart, less the space that was gone over while the Captain was coming on deck, he gave the order to starboard his helm, that did all the mischief.

Now this hypothesis is denied in part on the other side: but let us look at the probabilities as regards its truth.

Henry admits he put the helm hard astarboard at the Captain's order, but denies that *he said so* on board the Steamer. And he answers all the other questions as to his statements on board the Steamer, in the negative.

But turning to the Captain's testimony, (p. 17 on Cross-Exam.) we find him saying "I had not turned in that night, *but I pulled off my coat when I went into the cabin to warm myself.*"

The only difference, then, as regards the fact, between what the helmsman is reported to have said on board the Steamer, and what the Captain swears, is that, instead of *turning in for the night*, the latter had only gone into the cabin to warm himself! How long he remained there before he came on deck, is not stated at all.

The Captain says, "when I found the Steamer was coming between our masts, I told the man at the helm to starboard his helm"—but when was this? How long was it before he came on deck from warming himself in the cabin? Did he remain until the Steamer was twenty feet from him?

He says the Steamer was from 70 to 80 yards from us when I saw her beginning to haul her course across the bay. Ashcom and others swear the distance was between four and five miles when the Steamer began to keep out of the way.

But then, he says that "the Steamer, just before she got opposite to me"—which must mean, if it has any meaning, when the two vessels were nearly abeam, "hauled right across the bay."

The combined movement of the two vessels being then 16 or 17 miles—it is impossible to believe, that if the Steamer had then put her helm to port, or hauled across the bay, as the Captain of the Schooner swears she did, she would not have crossed the Schooner's wake far astern of her, when she reached the line on which the Schooner was sailing.

On the hypothesis here put, the case, as already said, becomes plain, and all the testimony on both sides, becomes sufficiently consistent. The Officer of the deck—on board the Steamer, seeing the Schooner, ports his helm to give her a wide berth—as soon as he makes out her position with his glass—the Schooner, steering by his Steamer's mast head light, seen over the hay, swings also to the eastward—then follows the "hard aport" of the Steamer—then the Captain of the Schooner, getting on deck, starboards his helm—hailed from the Steamer to port it,—and the collision takes place; although the steamer, from the moment that the risk of collision became possible—*going at half speed at the time*—had first slowed, then stopped, the engines, had then backed them, and they were working reversed, under full steam, at the time.

In fine, we have on board the Steamer, testimony which is consistent throughout, proving that the Rules of Navigation were observed to the very letter, for the purpose of obviating the catastrophe—and on the Schooner—we prove by the testimony of the sailor himself, whose duty it was at the time, in the bow of the vessel as a lookout, that he was amidships, and not in his place, and we have the admission of the Captain and all hands, except the cook, who was not examined, that—although the Schooner was seen from the Steamer when four miles off, the Steamer was not seen from the Schooner, until there was but from 3 to 400 yards between them. And the weight of the testimony is that, on a night, proved to have been one of the bitterest of the winter, the Captain of the Schooner was in the cabin warming himself, and hurried on deck, only in time to give the order that caused the collision.

And then we have, between the Captain and his two sailors, a direct contradiction in regard to distances, important always in cases like the present—which makes their entire statements in a great measure, unreliable.

While, therefore, it is admitted that a Steamer is bound to keep out of the way of a sailing vessel, yet it must be also admitted that it is possible for the sailing vessel to counteract all attempts to this end—and it is contended that this is just such a case, and that the decree of the Circuit Court, which was a *pro-forma* affirmance of the decree of the District Judge, in the absence of the Circuit Judge, should be revised.

The case of Haney and others *vs.* The Baltimore Steam Packet Company, 23 Howard, 257, already referred to, may, possibly, be relied on by the Appellee. The facts in the two cases are widely different, however, in essential particulars.

In the case in 23 Howard, stating the facts as they are found in the Court's Opinion,—it was the Captain's watch on deck, and "although he had seen the schooner, and knew that the vessels were approximating at the rate of twenty miles an hour, *he retires to his cabin.* It was his watch, and it was his duty to be on deck, as the officer of the watch." In the case at bar, the first mate, whose watch it was, was on deck, and diligently performing his duties. He says, "I was keeping a good look out on that night as ever I kept in my life; particularly watchful, as the Steamer had already had a collision with another Schooner."

The Court continue,—"He, the Captain, leaves on deck one man, besides the colored man at the wheel, to act as pilot, look-out and officer of the deck." In the case at bar, the officer in charge of the watch, Ashcom, was on deck: (there was a man at the wheel;—the first mate's watch (the men of the watch) was on deck.) There was "a good lookout forward—a good man"—who hailed "light on the port bow" when the Schooner was first seen some four or five miles off. There were men on the deck of the Steamer, (the mate's watch it is presumed,) besides Egbert, p. 15, who describes them as running about, crying "hard-a-port." The chief engineer came on deck several minutes before the collision, and stood-by to sound the bell as he might be directed by the mate, and as the emergency might require.

The Court, speaking of the second mate, (see 23d Howard,) say, "Accordingly, as pilot, he remained in the pilot house to direct the steersman, and as lookout, he occasionally leaned out of the window." In the case at bar, Jordan, the lookout was on deck ten feet from the bow, which was two and half feet high, and over which he would, of course, see without interruption.

The Court again say, "a slight turn of the wheel of the Steamboat, if given in due season, would have left a wide berth for the Schooner." In the case at bar, it is in proof, that this turn was given while the Schooner was still at a distance, and would have given her a wide berth had not the movement of the Schooner counteracted:—and when this movement was seen sufficiently, the "slight turn" which altered the direction of the Steamer's head

two points, was changed to "hard-a-port," which brought the Steamer's head at right angles with her proper course.

In 23 Howard, the Court further say,—"But this," the slight turn, "was neglected by the pilot and lookout, till within ten seconds or less of a collision, and then, the order was to *starboard* the helm instead of *porting* it, in direct contravention of the rules of navigation." In the case at bar,—the helm was ported, as already mentioned, while the Schooner was at a distance,—put hard-a-port as she came nearer; and in thus porting the helm the rules of navigation were strictly complied with.

From what the Court say, in 23d Howard, of the steersman being warned of the approach of the Steamer by the *lookout*, it would seem that there, the Schooner had one, and that he was at his post. In the case at bar—the so-called lookout of the Schooner was amidships, by his own confession, and sheltered there probably in the bitter weather among the hay. In this matter of the necessity of a lookout, and where he should stand, the Court adopt the language of other decisions, and reaffirm established rules, every one of which was complied with by the Steamer, and all of which were neglected on board the Schooner.

It is insisted, therefore, that tested by the case in 23d Howard, the decree in the case at bar should be reversed.

JOHN H. B. LATROBE,
For Appellant.

IN THE

Supreme Court of the United States.

THE STEAMER CARROLL,

(The Baltimore and Ohio Railroad Company, claimant,)

vs.

JOHN GREEN.

Appeal from a Decree of the Circuit Court of the United States for the District of Maryland, in affirmance of a Decree of the District Court of said District.

IN ADMIRALTY.

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Appeal from a Decree of the Circuit Court of the United States for the District of Maryland, in affirmance of a Decree of the District Court of said District.

IN ADMIRALTY.

This is a case of collision ; which occurred in the Chesapeake Bay, on the morning of December 22d, 1865, between the steamer Carroll, of the burthen of 1,000 tons or upwards, and the Schooner Loon, of the burthen of 75 tons. The Carroll was one of the steamers of the Baltimore and Liverpool line, the property of the Baltimore and Ohio Railroad Company. The Loon was the property of the Appellee, and was duly enrolled and licensed for the coasting trade. The schooner left the port of Baltimore, on the afternoon of the 21st of Decem-

ber, 1865, with an assorted cargo, destined for Hog Island, in James River, in the District of Virginia; and when, in her regular course down the Bay, she was in the neighbourhood of "Point no Point," between the mouths of the Patuxent and Potomac Rivers, the Steamer Carroll, then proceeding up the Bay, came into collision with the schooner, by which collision the schooner was so injured that she sank immediately, and all property on board was lost. There was no dispute, at the trial of the case, in either Court, as to the amount of the loss, sustained by the Appellee. The loss, as claimed, was admitted. See the decree, page 21. The libel propounded the following allegations, as the facts in relation to said collision. The schooner was proceeding down the Bay, on a course south by east, with a fair breeze from the north-west, at the rate of about seven miles an hour, with her lights properly suspended. The night was bright starlight, and the steamer was seen from the schooner, when half a mile distant, approaching up the Bay, in an opposite direction. The schooner held her course, steadily, until the steamer, when three hundred yards distant, suddenly ported her helm, changed her course to the eastward, and came directly down upon the schooner. When it was known on board of the schooner that a collision was inevitable, the schooner starboarded her helm, so as to throw her head eastward, and thus avoid receiving the blow amidship, by receiving it forward the foremast, on the starboard side, in an oblique direction. This blow cut nearly through the schooner down to her garboard streak, and she soon filled and sank.

The answer states, that as soon as the schooner was seen from the steamer, the helm of the steamer was put to port, and so would have passed the schooner, had she kept her course. But that, instead of keeping her course, the schooner's helm was starboarded, and she was thus thrown across the bow of the steamer.

The rules to be observed, by both the steamer and schooner, when approaching in opposite directions, as was the case here, are no longer questions of nautical skill, or of mere seamanship. A series of decisions of this Court had laid down rules for the guidance of Courts of Admiralty, which have now been embodied in the Statute of 29th April, 1864; 13 Statutes at

large, pages 60 and 61. We must, therefore, look to that Statute, and to the evidence, for the purpose of ascertaining which of the vessels was in fault.

1. The 15th Article applies to this case. The steamer and the schooner were, just before the collision, proceeding in such directions, as to involve risk of collision; and it was the duty of the steamer *to keep out of the way of the schooner.*

2. And, by the 16th Article, it was the duty of the steamer, when the vessels were thus approaching, to slacken her speed, or, if necessary, to stop and reverse.

3. It is true that, by the 18th Article, it was the duty of the schooner to keep her course; subject, however, to the qualifications contained in the 19th Article, one of which is (and it is material in this case) where the special circumstances rendered a departure necessary to avoid immediate danger.

4. The 20th Article, besides prescribing the special duties above mentioned, makes *any* neglect of *any* precaution, required by the ordinary practice of seamen, an inexcusable fault.

It will be noticed that the qualification, contained in the 18th section, applies only to the vessel that is to keep her course—in this case to the schooner. But the 15th and 16th Articles, which apply to the steamer, are peremptory and unqualified. The only open question is, whether the vessels were in such relation, *as to involve the risk of collision*, if both vessels should maintain their courses and their speed: and if such shall have been the case, then it became the absolute duty of the steamer *to keep out of the way;* and to *slacken* her speed, or, if necessary, to *stop* and *reverse.*

Now as a collision did occur, that is, as the steamer did not keep out of the way, the burden is obviously on the steamer to shew, to avoid the 15th Article, that the relation of the vessels was such as not to involve any risk of collision; or, in the alternative, that the steamer did adopt proper and efficient measures to keep out of the way, and that the collision occurred

entirely from the culpable misconduct of the schooner. And to escape under the 16th section, as the steamer did not slacken her speed, nor stop, nor reverse, the steamer must shew, that the relation of the vessels was such as not to involve any risk of collision. For the schooner, even if she blamably departed from her course, could not be responsible for the wilful failure of the steamer to slacken her speed, or to stop, or to reverse. Nothing would excuse this want of positive duty, unless the steamer can establish that there was no risk—not the *least* risk —of collision; and that the collision was entirely the result of misconduct on the part of the schooner.

It will respectfully be insisted, on the part of the Appellee, that the evidence sustains the following propositions of fact:

1. There *was* risk of collision, from the moment the schooner was seen from the steamer.

Mr. Ashcom, who was in command of the steamer, at the time of collision, says, when he first saw the schooner she was 4 or 5 miles distant, (on cross-examination, page 14.) He also says, (page 15,) that *as soon* as he made the schooner's light to be a port light, he gave the order to port the wheel, and it was done. *This shews, that, in the judgment of this witness*, there was risk of collision. But, although he changed his course, he did not then slacken the speed of the steamer. The steamer was going at the speed of 9 or 10 knots an hour, and the schooner at 7 or eight knots an hour, which would make the combined speed 17 knots an hour; and the distance between the vessels would be overcome, if the distance was four miles, in about 14 minutes. If, therefore, the witness had changed his course *immediately*, upon sight of the schooner, he must have done so, because there was risk of collision. But he does not say, that he did change his course immediately, and the lookout of the steamer (Jordan) gives a very different account. He says, page 11, that he saw the schooner, about 15 minutes before the steamer struck her, and reported the lights to the officer of the deck, who said "very good;" and this witness says, that the course of the steamer was changed about 4 or 5 minutes before the collision—which, by computation, was when

the vessels were distant a little more than a mile. Up to this time, if this witness of the Appellant is to be credited, there was no change of course, no slacking of speed, no attempt to stop and reverse.

Now the captain of the steamer was examined on the part of the Appellant (page 8); but he says he was below, asleep, when the collision took place. The chief engineer of the steamer was also examined on the part of the appellant (page 10), but he only came on deck, when he heard the order, repeated by the wheelsman of the steamer, to port. *After* he came on deck, the order was given to *stop* and *back*. On his cross-examination he states, that when he first got on deck, the schooner was distant 5 or 6 lengths of the steamer; and he supposes the length of the steamer to be 250 feet, making the distance 1000, or, at farthest, 1250 feet, say between 3 and 400 yards or thereabouts. The second officer of the steamer was also examined, on the part of the Appellant; but he was in his state room, when he heard the order to the wheelsman to put his helm "hard-a-port," and only got on deck at the moment of collision. The assistant engineer of the steamer was examined (page 13); but his position was in the engine room and he did not see the collision. The wheelsman of the steamer was not examined, nor is his absence accounted for. The only witnesses, therefore, on the part of the Appellant, who testified as to the state of case, prior to the collision, are Mr. Ashcom, the mate, who was, at the time, in command of the steamer; and Mr. Jordan, who was the lookout on the steamer; and the purport of the evidence of both has been stated.

On the part of the Appellee, four witnesses were examined—one of them, Wesley Egbert, was a passenger on the steamer; and the other three were the captain, the lookout, and the wheelsman on board of the schooner. The deposition of Mr. Egbert, commences on page 15. He was the captain of the unfortunate schooner Elijah Spedden, which, at a previous hour of the same night, had been run down by the steamer; and he was, in consequence of this disaster, on board of the steamer. His position, at the time of the collision, was on the port side of the steamer, about 20 feet from her stem. His attention was attracted by hearing men, on the steamer, singing out,

"hard-a-port." At that time, he says, the schooner was about 300 yards off, *ahead* of the steamer, a little off her port bow, shewing a green light. He says that, judging from the north star, the course of the schooner was, at that time, south south-east, or south-east; and that the steamer was heading about north-east, or north-east by east, but that the steamer was bearing off to the eastward, her helm being hard-a-port. It is manifest that the attention of this witness was not called to the schooner until a short time previous to the collision. The schooner, he says, was distant about 3 or 400 yards, and he heard men on the steamer crying, *hard-a-port.* He saw the *green light* of the schooner, a little off the port bow of the steamer. He ascribes the collision to the act of the steamer, in putting her helm hard-a-port. And this was, probably, the *immediate* cause of collision, resulting from the dangerous proximity of the vessels, at the moment preceding the collision —a dangerous proximity, as the Appellee respectfully insists, caused by the previous neglect of the steamer to take proper precautions to prevent a collision.

The next witness examined on the part of the Appellee was the captain of the schooner. He coincides with the other witnesses, as to the course of the two vessels, and the direction of the wind. He states, however, that he saw the steamer when about a quarter of a mile distant, over the starboard bow of the schooner, and saw but one light—the signal light of the steamer on her foremast. He told the wheelsman to keep his course, and he did so. When he saw the collision was inevitable, he ordered the man at the wheel to starboard his helm, so as to avoid being struck amidships. At that time, the steamer was only 20 feet distant.

Daniel Travers and Jacob Henry, (colored persons) seamen on board of the schooner, corroborate the statement of Captain Edmonson, in all material facts. Their discrepancies or errors, as to time and distance, are not to be regarded. Their testimony is direct, positive, and clear. The usual attempt to discredit a witness, by asking questions as to what, it may be suggested, he said after the disaster, signally failed in the examination of one of these witnesses.

The following points will be maintained on the part of the Appellee:

1. The steamer has shewn no excuse for not keeping out of the way of the schooner.

2. She had full time and opportunity to avoid a collision; and she ought to have changed her course, long before she did change it; and ought to have slackened her speed, which she did not do, until a collision was imminent and inevitable.

3. The steamer ought to have maintained a steady and incessant watch of the schooner, and of her course and movements; and should have acted, not only with a desire to avoid a collision, but with such precautions as would have prevented a collision.

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